

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.9166 of 1997

ORAL ORDER:

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This writ petition is filed seeking a Certiorari to call for the records relating to Order No.3006/RP/1/95-1 dated 5.3.1997 issued by the respondent in removing the petitioner from service and quash the same as arbitrary and illegal.

It appears, petitioner was appointed as Assistant Professor in the Respondent University with effect from 2.3.1981. Thereafter, he was selected for the post of Deputy Registrar (Administration) on 3.3.1993 and subsequently designated as Deputy Registrar (Examination). While that being so, he was kept under suspension by proceedings dated 1.5.1995 pending enquiry into certain allegations made against him. Further, a charge memo has been issued enumerating the charges made thereunder. After conducting a detailed enquiry into the matter, the impugned order has been passed removing the petitioner from the service of the University. The sum and substance of the charges against the petitioner is that he connived with the Superintendent (Examinations) in tampering the marks list of one MBBS student who failed in two subjects i.e. Medicine and Obstetrics and Gynecology and also forged two letters purported to have been issued by the External Examiner in Medicine dated 15.6.1994 stating that there was some mistake in allotting marks in favour of the candidate and the same needs to be corrected as noted in the letters.

The learned counsel for petitioner states that absolutely there is no charge directly attributable to the petitioner. The whole charge is based on suspicion and surmises since the petitioner happened to be the Deputy Registrar of Examinations and signed the corrected memorandum of marks

on the basis of letters purported to have been received from two examiners. The Enquiry Officer who submitted his report on 8.11.1986 had categorically stated that the Superintendent of Examinations was responsible for tampering the marks as well as forging the letter dated 15.6.1994. But however, the Enquiry Officer on suspicion, held that the petitioner is also guilty of the charge being the Deputy Registrar of Examinations. The learned counsel further pointed out that the Superintendent who gave statement against the petitioner was neither examined nor the petitioner was permitted to cross-examine him. In fact, when such a request was made, the same was rejected by the Enquiry Officer. Further, the petitioner sought to examine one Senior Assistant and a Junior Assistant for the purpose of proving certain practice adopted in the examination wing for issuing altered memorandum of marks etc., but he was not permitted to do so. Thus, he was denied of reasonable opportunity of defending himself.

Whereas, the learned counsel for Respondent University strenuously contended that the petitioner being head of the Examination branch, has not taken care of either verifying the forged letter dated 15.6.1994 nor has verified the altered memorandum of marks prepared by the Superintendent. On the other hand, he himself admitted that he knows about the corrections made in the register as well as in the memorandum of marks issued to the candidate, but simply stated that there was no practice requiring him to verify the register for the purpose of correcting marks in the memorandum. The examination of Superintendent and others have no relevance for the purpose of deciding the misconduct leveled against the petitioner. Therefore, the Enquiry Officer has rightly found that the petitioner is equally responsible for the misconduct. Under those circumstances, the disciplinary authority as well as the Executive Council has rightly taken a decision to remove the petitioner from the service of the University. The petitioner has not made out any case calling for interference of this Court under Article 226 of the Constitution of

India.

I have heard the learned counsel for the petitioner and the learned counsel for Respondent University and perused the impugned order and other material made available on record.

Firstly, it cannot be said that there is no necessity of Superintendent (Examinations) being examined either in the presence of the petitioner or to cross-examine him as to the statements made against the petitioner. The Superintendent being the real culprit as per the Enquiry Officer and any statement made by the Superintendent would definitely affect the interest of the petitioner. The Superintendent could have been examined in the presence of the petitioner and the petitioner should have been permitted to cross-examine him. Such a course of action was not followed. On the other hand, it is the case of the respondent that there is no necessity of such examination since the petitioner did not ask about the same. Whether the petitioner asked or not, it is for the disciplinary authority to provide a fair and reasonable opportunity to the petitioner to cross-examine such witness. Further, the case of the petitioner is that, he simply believed the Superintendent and signed the memorandum of marks. According to the petitioner, the only mistake he committed is that he did not verify for the purpose of correction or alteration of memorandum of marks sheet. According to him, there was no necessity of obtaining permission from the Registrar or Vice Chancellor for issuing altered memorandum of marks. It is an admitted fact that the Enquiry Officer categorically held that the Superintendent was solely responsible for correcting the letters as well as memorandum of marks. Under those circumstances, it can only be inferred that the petitioner was not diligent in verifying the facts and has signed the documents without proper verification etc. Further, it is interesting to notice that the very charge is that the petitioner who is the Deputy Registrar of Examinations has connived with the Superintendent (Examinations). It is not

the case where Superintendent connived with Deputy Registrar for the purpose of committing crime. This itself shows that though the petitioner was negligent of certain acts which he is not supposed to, it is the Superintendent, as per the findings of the Enquiry Officer, was guilty. The petitioner, of course, cannot absolve himself being at the realm of affairs and blindly signing certain documents which were brought to his notice particularly alteration/correction of memorandum of marks etc. I am of the opinion that since the Superintendent of Examinations, who spoke against the petitioner, was not examined in the presence of the petitioner and the petitioner was not permitted to cross-examine, it will definitely caused prejudice to the petitioner. In the entire enquiry report, there is not even a whisper to show that any particular act is attributable to the petitioner. The Enquiry Officer stated that any acts done by the people at the realm of affairs of petitioner, the petitioner is supposed to supervise, therefore, it must be deemed that the petitioner is equally responsible and guilty of the charges.

In view of the above, I am of the opinion that the impugned proceedings not only suffers from procedural irregularities, but also principles of natural justice. Apart from that, I am also of the opinion that for the misconduct of this nature, the removal from service is shockingly disproportionate to that of the misconduct alleged against the petitioner.

Now it is more than 10 years since the petitioner was removed from service. No purpose would be served if the matter is remitted back for fresh enquiry. Therefore, I am of the opinion that the matter needs to be remitted back to the Executive Council for imposing a suitable punishment other than dismissal/removal from service.

In the result, the writ petition is allowed and impugned order is set aside. The matter is remitted back to the Executive Council for imposing a suitable punishment against the petitioner other than dismissal/removal from service. The Executive Council shall take a decision in this regard within a

period of eight (8) weeks from the date of receipt of a copy of this order. No order as to costs.

C.V.RAMULU, J

Date: 9.3.2007

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**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.9166 of 1997

Date: 9th March, 2007

Between:

L.Prakasham Reddy

.. Petitioner

And

The University of Health Sciences,
represented by its Registrar,
Vijayawada.

.. Respondent